

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: LOWES HOME CENTERS INC.)	
8300 HWY 64)	Shelby County
Parcel ID Map B01, Blk. 58, Parcel 655)	
Commercial Property)	
Tax Year 2002)	

ORDER
Statement of the Case

This appeal has been filed on behalf of the above noted taxpayer by Mr. Jerry Caruthers. Mr. Caruthers subsequently filed Motions to Dismiss Increase in Assessment by Shelby County Board of Equalization on March 8, 2006. Mr. Caruthers states in the application for the appeal, in response to question 16 of the appeal form, that "*The County Board had no Authority to Act on the Assessment*"¹ as his basis/ground for the appeal. The Shelby County Assessor's Office has chosen not to respond to the Motions.

Findings of Facts and Conclusions of Law

A taxpayer/ property owner has the right to contest an assessment that he/she believes is unfair. TENNESSEE CODE ANNOTATED § 67-5-1407 sets forth the grounds for an appeal to the County Board:

(a) (1) Any owner of property or taxpayer liable for taxation in the state has the right by personal appearance, or by the personal appearance of the duly authorized agent of the owner of the property, which agency shall be evidenced by a written authorization executed by the owner or taxpayer, or by representation by an attorney, to make complaint before the county board of equalization **on one (1) or more of the following grounds:**

(A) Property under appeal or protest by the taxpayer has been erroneously classified or sub classified for purposes of taxation;

(B) Property under appeal or protest by the taxpayer has been assessed on the basis of an appraised value that is more than the basis of value provided for in part 6 of this chapter; and

(C) Property other than property under appeal or protest by the taxpayer has been assessed on the basis of appraised values which are less than the basis of value provided for in part 6 of this chapter. [emphasis supplied]

This statute must be analyzed and read in conjunction with TENNESSEE CODE ANNOTATED § 67-5-1412 , which states in relevant part, pertaining to an appeal of a county or other local board action to the state board, that such appeal is only authorized as follows:

(a) (1) Any taxpayer, or any owner of property subject to taxation in the state, who is aggrieved by any action taken by the county board of equalization or other local board of equalization has the right to a hearing and determination by the state board of equalization of any complaint made **on any of the grounds provided in** [TENNESSEE CODE ANNOTATED] § 67-5-1407. . . . [emphasis supplied]

¹ Mr. Caruthers in his Motion states that on February 5, 2003, the Shelby County Board of Equalization while in special session reached out on its own motion and issued a Notice that a hearing would be conducted on February 24, 2003, on the 2002 assessment for the subject property.

Mr. Caruthers' ground does not correspond with the statute. Additionally, before the State Board of Equalization hears an appeal it must be determined that it has the authority and jurisdiction to hear the appeal pursuant to TENNESSEE CODE ANNOTATED § 67-5-1501. In reviewing the statute, the basis/ground that Mr. Caruthers complains of, does not in this administrative judges' opinion, meet the criteria.

The jurisdiction and duties are set out below for the filing of appeals:

- (a) The state board of equalization has jurisdiction over the **valuation, classification and assessment** of all properties in the state.
- (b) The board shall have and perform the following duties:
 - (1) Receive, hear, consider and act upon complaints and appeals made to the board;
 - (2) Hear and determine complaints and appeals made to the board concerning exemption of property from taxation;
 - (3) Take whatever steps it deems are necessary to effect the equalization of assessments, in any taxing jurisdiction within the state in accordance with the laws of the state;
 - (4) Carry out such other duties as are required by law; and
 - (5) Provide assistance and information on request to members and committees of the general assembly relative to the taxation, classification and evaluation of property. [emphasis supplied]

Further, a judicial interpretation of the statute states:

Procedures set forth in T.C.A. § 67-1-901, T.C.A. § 67-5-509, T.C.A. § 76-5-1407, and T.C.A. § 67-5-1501 **are the exclusive means for challenging an erroneous property tax assessment**, outside of filing a lawsuit based on purely legal issues. *The Metro. Government of Nashville & Davidson County Ex Rel. State v. Taxpayers*, - S.W.3d -, 2005 Tenn. App. LEXIS 195 (Tenn. Ct. App. Mar. 31, 2005), appeal denied 2005 Tenn. LEXIS 743 (Tenn. Aug. 29, 2005). [emphasis supplied]

Once more, none of the aforementioned statutes coincide with Mr. Caruthers allegation. The challenge against the County Board is legal in nature². Even assuming arguendo that the State Board had the authority to hear the appeal, Mr. Caruthers' argument is without advantage. Mr. Caruthers as the Movant has the burden to prove the ground alleged, here he has failed to do so. Uniform Rules of Administrative Procedure 1360-4-1-.09

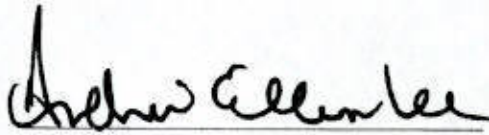
The Board was in "special session" and certainly had the inherent authority to hear appeals pursuant to its mandate; however, Mr. Caruthers' assertion challenges the legality of the County Board's actions. Mr. Caruthers has chosen the wrong forum.

² "The final manner of appealing an error in assessment occurs where the claimed error raises purely legal issues. In that case, the taxpayer may bypass the administrative process altogether and proceed directly through the courts". *Fentress County Bank v. Holt*, 535 S.W.2d 854,857 (Tenn. 1976). Further, pursuant to T.C.A. § 67-5-1514 (c)(D) it is questionable whether Mr. Caruthers would be the proper person to represent this taxpayer making this argument.

Therefore considering all the foregoing, the Motion to Dismiss is denied, it is further the opinion of the administrative judge that the appeal itself is dismissed for lack of proper authority of this Board to hear such arguments.

It is so **ORDERED**.

Entered on this the 10th day of JULY, 2006.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Jerry Caruthers, Caruthers and Associates, Agent
John Zelinka, Attorney for the Shelby County Assessor of Property
Tameaka Stanton-Riley, Shelby County Assessor of Property Office